

Exhibit 13

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION

4 * * * * *

5 B.P.J., by her next friend and *
6 Mother, HEATHER JACKSON, *
7 Plaintiff * Case No.
8 vs. * 2:21-CV-00316
9 WEST VIRGINIA STATE BOARD OF *
10 EDUCATION, HARRISON COUNTY *
11 BOARD OF EDUCATION, WEST *
12 VIRGINIA SECONDARY SCHOOL *
13 ACTIVITIES COMMISSION, W. *
14 CLAYTON BURCH in his official *
15 Capacity as State Superintendent,* VIDEOTAPED
16 DORA STUTLER in her official * VIDEOCONFERENCE
17 Capacity as Harrison County * DEPOSITION
18 Superintendent, PATRICK MORRISEY * OF
19 In his official capacity as * HEATHER JACKSON
20 Attorney General, and THE STATE * January 19, 2022
21 OF WEST VIRGINIA, *
22 Defendants *
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1 VIDEOTAPED VIDEOCONFERENCE DEPOSITION
2
3 HEATHER JACKSON, taken on behalf of the Defendant, State
4 of West Virginia herein, pursuant to the Rules of Civil
5 Procedure, taken before me, the undersigned, Nicole
6 Montagano, a Court Reporter and Notary Public in and for
7 the State of West Virginia, on Wednesday, January 19,
8 2022, beginning at 4:02 p.m.

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S T I P U L A T I O N

3 (It is hereby stipulated and agreed by and between
4 counsel for the respective parties that reading,
5 signing, sealing, certification and filing are not
6 waived.)

P R O C E E D I N G S

ATTORNEY TRYON: This is David Tryon,

1 representing the State of West Virginia. And with me
2 is ---.

3 ATTORNEY CAPEHART: Curtis Capehart also
4 representing the State of West Virginia.

5 ATTORNEY BLOCK: This is Josh Block. I'm
6 representing Plaintiff BPJ and the witness. And with
7 folks' indulgence, I will have my co-counsel from Cooley
8 announce themselves followed by my co-counsel's from
9 Lambda Legal.

10 ATTORNEY HARTNETT: Hi. This is Kathleen
11 Hartnett from Cooley for BPJ and the witness.

12 ATTORNEY BARR: This is Andrew Barr from
13 Cooley for BPJ and the witness.

14 ATTORNEY VEROFF: This is Julie Veroff
15 from Cooley for BPJ and the witness.

16 ATTORNEY HELSTROM: This is Zoe Helstrom
17 from Cooley, LLP, for BPJ and the witness.

18 ATTORNEY SWAMINATHAN: This is Scruti
19 Swaminathan for BPJ and the witness from Lambda Legal.

20 ATTORNEY GREEN: Roberta Green, Schuman
21 McCuskey, Slicer here on behalf of West Virginia
22 Secondary School.

23 ATTORNEY DENIKER: Good afternoon. I'm
24 Susan Deniker from Steptoe and Johnson, PLLC,

1 representing Defendants Harrison County Board of
2 Education and Harrison County Superintendent Dora
3 Stutler.

4 ATTORNEY MORGAN: This is Kelly Morgan
5 with Bailey and Wyant as well as Kristen Hammond on
6 behalf of the West Virginia Board of Education and
7 Superintendent Burch.

8 ATTORNEY DUCAR: Good afternoon. Timothy
9 Ducar on behalf of Intervenor, Lainey Armistead.

10 ATTORNEY TRYON: Go ahead.

11 VIDEOGRAPHER: I was just going to say,
12 if that's everybody, the court reporter can swear in the
13 witness and we can begin.

14 ATTORNEY TRYON: Before you do that, the
15 communications are very garbled on our end. Is anyone
16 else experiencing that?

17 ATTORNEY GREEN: Very what? I'm sorry.

18 ATTORNEY TRYON: My point. I couldn't
19 understand anything that you just said. I think we're
20 going to log off and log back in. Get somebody to help
21 me do that. So I will be back in just a couple of
22 minutes here okay.

23 VIDEOGRAPHER: Other counsel, I'm
24 assuming we want to go off the record until he is back.

1 ATTORNEY GREEN: Yes.

2 VIDEOGRAPHER: Going off the record.

3 Current time reads 4:05 p.m.

4 OFF VIDEOTAPE

5 ---

6 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

7 ---

8 ON VIDEOTAPE

9 VIDEOGRAPHER: We are back on the record.

10 The current time reads 4:09 p.m.

11 ATTORNEY STARK: My name is Loree Stark,
12 and I'm with the ACLU of West Virginia and I'm here on
13 behalf of Plaintiff.

14 VIDEOGRAPHER: And if that's everybody,
15 the court reporter can swear in the witness so we can
16 begin.

17 COURT REPORTER: Ms. Jackson, would you
18 raise your right hand?

19 ---

20 HEATHER JACKSON,
21 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
22 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
23 FOLLOWS:

24 ---

1 COURT REPORTER: Thank you.

2 ---

3 EXAMINATION

4 ---

5 BY ATTORNEY TRYON:

6 Q. Hello, Ms. Jackson, my name is David Tryon. I'm
7 an attorney from the State of West Virginia. Thank you
8 for taking your time to --- for this deposition today.

9 Can you please state your name for the record?

10 A. Heather Jackson.

11 Q. And do you prefer that I call you Mrs. Jackson
12 or Ms. Jackson or something else?

13 A. Ms. Jackson is fine.

14 Q. Okay.

15 So first of all, can you tell me if you are
16 represented by counsel today?

17 A. I'm represented by counsel, yes.

18 Q. And can you tell me who your attorneys are?

19 A. The names or their groups?

20 Q. Either one.

21 A. Well, ACLU and the Cooley law, Lambda Legal.

22 Q. Okay.

23 And do you have any formal engagement letter or
24 retainer letter with any of those attorneys?

1 A. I don't understand the question.

2 Q. Sure. At the time that you retained those
3 attorneys or they became your attorneys, did you have a
4 written document that you signed with them saying you
5 are my attorneys?

6 A. Yes.

7 Q. Okay.

8 And how long ago was that signed?

9 A. I don't know the date.

10 Q. Was it before or after this lawsuit was filed?

11 A. Before.

12 Q. Was it before or after the Law House Bill 3293
13 was passed?

14 A. After.

15 Q. And who else is on that besides you? Is your
16 child BPJ on that?

17 A. BPJ.

18 Q. And is your husband Wesley on that?

19 A. I believe so.

20 Q. Okay.

21 Have you ever been deposed before?

22 A. No.

23 Q. Have you ever been sued before?

24 A. No.

1 Q. Have you received some guidance on how a
2 deposition works?

3 A. I've been told how it works.

4 Q. Okay. Great.

5 Well, I'm just going to go through some of the
6 rules. And you may have heard them before, but we'll go
7 through anyways. So first of all, the Federal Rules of
8 Civil Procedure apply here. And just so you know how
9 this works with objections, the specific rule involved,
10 which is Rule 30(c)(2) says an objection at the time of
11 the examination, whether to evidence, to a party's
12 conduct, to the officer's qualifications, to the manner
13 of taking the deposition or to any other aspect of the
14 deposition must be noted on the record but the
15 examination still proceeds. The testimony is taken
16 subject to any objection. An objection must be stated
17 concisely in a non-argumentative and non-suggestive
18 manner. That's the rule.

19 So in other words, if your counsel objects to
20 any of my questions or any of the other lawyers'
21 questions, they can object, they can state the reason
22 why, but they can't --- but you still need to answer the
23 question unless they specifically instruct you to not
24 answer it.

1 Do you understand that?

2 A. Yes.

3 Q. Okay.

4 And so in the context of this deposition, the
5 deposition is a little odd, which is where we ask you
6 questions about information that you might have about
7 this lawsuit that you filed on behalf of BPJ, and so you
8 will just answer those questions as far as to the best
9 of your ability.

10 Okay?

11 A. Okay.

12 Q. And if you don't understand my question and
13 would like me to clarify it, please ask me to clarify it
14 and I will do my best to do so.

15 Okay?

16 A. Okay.

17 Q. Also, I would like you to answer orally as you
18 have been doing rather than nodding or shaking your
19 head.

20 Okay?

21 A. Okay.

22 Q. And also, if you need a break during this
23 deposition, let me know. This is not designed to be an
24 endurance contest, so let us know if you need to take a

1 break.

2 I want to ask you first, during your husband's
3 --- your understanding is that your husband --- his
4 deposition was just taken.

5 Right?

6 A. Correct.

7 Q. Were you able to listen into it or watch it in
8 any fashion?

9 A. No.

10 Q. After his deposition, did he tell you about it?

11 A. No.

12 Q. And during the course of his deposition or
13 after, did anybody send you texts or emails telling you
14 about it?

15 A. No.

16 Q. So before we get actually started with any
17 questions, I just want to let you know that we, as
18 counsel, are not here to try and cause you any heartburn
19 or to judge you or anyone in your family. These are
20 situations which are, you know, obviously a little
21 different than some of us have experienced and they're
22 sometimes challenging, but in this situation your ---
23 BPJ has followed this lawsuit through you to challenge
24 the State's law, and so we have an obligation on behalf

1 of the State to defend that law. And so, as a result,
2 we have an obligation to then ask you questions about
3 your rationale, about the facts that are involved with
4 this. And so that's the background for this. I just
5 want to tell you that's why we're asking these questions
6 of you. Does that sound fair so far?

7 ATTORNEY BLOCK: Objection to the extent
8 that you're asking her to agree with your legal
9 interpretation of what the law requires you to do. You
10 can answer it.

11 THE WITNESS: Yes.

12 BY ATTORNEY TRYON:

13 Q. In preparation for your deposition today did you
14 look at any documents?

15 A. I have documents, yes.

16 Q. Have you looked at those as you prepared for
17 this deposition today?

18 A. A while back.

19 Q. Okay.

20 In the past week have you looked at any in
21 anticipation of this deposition?

22 A. No.

23 Q. Have you had ample time to discuss this --- to
24 prepare for this deposition in consultation with your

1 attorneys?

2 A. Yes.

3 Q. In connection with preparing for this
4 deposition, did you have any discussions with either BPJ
5 or with your husband?

6 A. Can you repeat that, please?

7 Q. Yes. In preparation for this deposition, did
8 you talk to either your husband or BPJ?

9 A. No.

10 Q. And just so you know, the reason I'm using the
11 initials BPJ is twofold. First of all, because it is
12 the name of the Plaintiff in the deposition --- excuse
13 me, in the Complaint that was filed. And also, because
14 whenever there's a minor involved, we typically in court
15 documents and court proceedings use the initials of the
16 minor. And so I'm not suggesting that you need to use
17 those initials. You can refer to BPJ in any manner that
18 you feel comfortable, but I want you to understand why
19 I'm using those initials.

20 Okay?

21 A. Yes.

22 Q. First of all, let me ask you about the law
23 itself. HB 3293, are you familiar with that law?

24 A. Yes.

1 Q. Have you read it?

2 A. Full on, no.

3 Q. Okay.

4 But certain parts you've read?

5 A. Just to get the extent of the knowledge that it
6 would not allow my daughter to participate in girls
7 sports.

8 Q. Okay.

9 And what's your basis for that understanding?

10 A. The law, as I've read it, from what I've read.

11 Q. And from what you can remember, what about the
12 law would prevent your --- prevent BPJ from
13 participating in girls sports?

14 A. Because she is a transgender female, she
15 wouldn't be permitted to play with the female sports
16 teams.

17 Q. Okay.

18 You've read part of the law you said but not
19 all.

20 Is that right?

21 A. Correct.

22 Q. Are you aware of any place in that law where it
23 uses the terms transgender?

24 ATTORNEY BLOCK: Objection to the extent

1 that you're asking her about the text of the document
2 that she doesn't have in front of her. I would like ---
3 I request you provide her the document unless you're
4 testing her memory.

5 ATTORNEY TRYON: My question stands.

6 Can the court reporter please read back
7 my question?

8 COURT REPORTER: Are you aware of any
9 place in that law where it --- where it uses the term
10 transgender?

11 THE WITNESS: I don't know.

12 BY ATTORNEY TYRON:

13 Q. Well, let's take a look at that.

14 ATTORNEY TRYON: I'll have the court
15 reporter pull up Exhibit 34, please.

16 BY ATTORNEY TRYON:

17 Q. So I would like to briefly go through this so
18 you can see the extent of it. So this is the first page
19 of House Bill 3293. And this is the second page. And I
20 will just go through it quickly. And if you want me to
21 go back and show you any particular page, I'm happy to
22 do that.

23 Okay.

24 This is the next page. That's the final page

1 of the text and then there's a blank page for some
2 reason and then there is the last page, which has
3 signatures --- signature lines for various parties. So
4 let me go back up to the beginning. And what I'd like
5 to ask you is can you tell me what parts of it you have
6 read prior to today, starting at page one?

7 ATTORNEY BLOCK: Objection. Can you give
8 the witness a chance to read the entire document before
9 answering your question as to parts of it?

10 BY ATTORNEY TRYON:

11 Q. Sure. You can tell me when you're ready to move
12 to the next page.

13 A. Okay. Next page.

14 Q. Okay.

15 Going down on this page. That is the remainder
16 of that page. Go ahead.

17 A. Okay.

18 Q. This is the top of the second page of the text?

19 A. Okay.

20 Q. All right.

21 That is the bottom half of the first page of
22 the text?

23 A. Okay.

24 Q. And this is the top of the next page of the

1 text?

2 A. Okay.

3 Q. And scrolling down to the last half of the full
4 text of the --- on that page of the text.

5 A. Okay.

6 Q. Would you agree with me that the term or the
7 word transgender does not appear anywhere in this bill?

8 A. It does not.

9 Q. And can you tell me what portions of this bill
10 that you believe prevents BPJ from participating in girl
11 sports?

12 A. The references to biological sex being male at
13 birth.

14 Q. So you are referring to line 25 and 26 on the
15 --- what is marked as page two of the bill?

16 A. Can you go up to the first page?

17 Q. Well, the first page --- yes, this is the first
18 page.

19 A. Okay.

20 There where it is talking about defining
21 biological sex as female and male.

22 Q. Okay.

23 You're looking at line four on the first page?

24 A. Yeah.

1 Q. On the left side there's lines?

2 A. I see --- I see the line numbers, okay. Yes.

3 Q. Okay.

4 Anything else in here that you saw? Tell me if
5 you want me to scroll down or anything.

6 A. Just the references to the biological sex of
7 female and male.

8 Q. Okay.

9 So you're saying the reference to biological
10 sex of female and male as referenced throughout the
11 bill?

12 A. Correct.

13 Q. So under the terminology of this bill would you
14 agree that BPJ has the biological sex of male?

15 A. Biological sex as male, correct.

16 Q. Just to be clear we are communicating, so the
17 biological sex of BPJ is male.

18 Right?

19 ATTORNEY BLOCK: Objection to the extent
20 --- I'm sorry.

21 THE WITNESS: She was born a male.

22 BY ATTORNEY TYRON:

23 Q. Okay.

24 And specific to this bill, under this bill BPJ

1 is defined --- would be defined as a biological male.

2 Right?

3 A. Correct.

4 Q. These are not trick questions. I'm just trying
5 to establish a baseline for us to communicate. But if
6 you think they are trick questions, you just tell me and
7 we'll try to clarify the questions.

8 So let me scroll down and --- so what parts of
9 this had you, in fact, read?

10 A. Parts of the first page and then the parts where
11 it says that if the --- it's like down on the third
12 page, I believe.

13 Q. I'll scroll down and you tell me when to stop.

14 A. Maybe it's not on the third page. Where it
15 talks about if there's ---.

16 Q. Well, this is page two right here of the bill.

17 A. Okay. Line 48.

18 Q. Line 48. So line 48 says any student aggrieved
19 by a violation of this section may bring an action
20 against a County Board of Education or state institution
21 of higher education alleged to be responsible for the
22 alleged violation. Is that what you're referring to?

23 A. Yes.

24 Q. Do you believe that's the provision under which

1 your lawsuit has been filed?

2 ATTORNEY BLOCK: Objection, misstates her
3 testimony.

4 ATTORNEY TRYON: I'm asking the question.

5 THE WITNESS: I believe that my child is
6 harmed by this bill, which is why we are filing this.

7 BY ATTORNEY TYRON:

8 Q. Okay.

9 In what way is your child harmed by this bill?

10 A. She cannot participate on female sports.

11 Q. And how is that harmful? To use your words, how
12 is that a harm to BPJ?

13 A. She is being denied the opportunity to
14 participate.

15 Q. The opportunity to participate in what?

16 A. In female sports.

17 Q. Under this bill would BPJ be permitted to
18 participate in male sports?

19 A. She wouldn't participate in male sports.

20 Q. Okay.

21 But that's not my question. My question is
22 under this bill would BPJ be permitted to participate in
23 male sports?

24 ATTORNEY BLOCK: Objection. Calls for a

1 legal conclusion.

2 BY ATTORNEY TYRON:

3 Q. Go ahead.

4 A. She could participate in male sports.

5 Q. And --- okay.

6 I'm now looking at page one as marked at the
7 bottom of the bill. In line one it says the legislature
8 hereby finds and then it lists a number of findings by
9 the legislature. Prior to today have you read those
10 findings?

11 A. No.

12 Q. Starting on line two, on page one it says there
13 are inherent differences between biological males and
14 biological females and that these differences are cause
15 for celebration as determined by the Supreme Court of
16 the United States in the United States versus Virginia,
17 1996. Do you agree with that statement?

18 ATTORNEY BLOCK: Objection to vagueness
19 of the terms.

20 THE WITNESS: I don't understand a lot of
21 the lawyer --- the legalese.

22 BY ATTORNEY TRYON:

23 Q. What part of that sentence do you not
24 understand?

1 A. The inherent differences. I mean, there's are
2 differences yes, but it's not telling me what the
3 inherent difference are.

4 Q. Very good. So do you agree that there are
5 inherent differences between biological males and
6 biological females?

7 ATTORNEY BLOCK: Objection again to the
8 vagueness of the terms biological males and biological
9 females.

10 ATTORNEY TRYON: Counsel, I would just
11 appreciate if you just state objection, vagueness,
12 something along those lines, rather than your extended
13 objection.

14 BY ATTORNEY TYRON:

15 Q. So ma'am, I'll ask you one more time. Do you
16 agree with the statement there are inherent differences
17 between biological males and biological females?

18 A. Do you mean physical differences?

19 Q. I'm reading the bill. I don't mean anything.
20 I'm asking if you agree with that statement that there
21 are inherent differences between biological males and
22 biological females?

23 A. I don't know what it means by inherent
24 differences, if it's talking about physical differences.

1 Q. Do you know what the word inherent means?

2 A. Apparently not.

3 Q. Do you know what the word differences mean?

4 A. Yes.

5 Q. Okay.

6 Do you believe that there are differences
7 between biological males and biological females?

8 A. There are physical differences, correct.

9 Q. Do you believe there are other differences
10 between biological males and biological females other
11 than physical differences?

12 ATTORNEY BLOCK: Objection, vagueness.

13 THE WITNESS: I'm not a physician here.
14 I'm just --- I mean, there's differences between males
15 and females.

16 BY ATTORNEY TRYON:

17 Q. Correct. And you are suing to have this law
18 overturned, so I'm asking --- I want to understand
19 specifically what parts of the law you agree with and
20 what parts you disagree with because that's very
21 important in a lawsuit where you're challenging the
22 constitutionality of a law. And that's why I'm asking
23 what you understand the differences are between
24 biological males and biological females?

1 ATTORNEY BLOCK: Objection.

2 Argumentative, vague.

3 THE WITNESS: There are differences
4 between biological males and biological females.

5 BY ATTORNEY TRYON:

6 Q. What's your understanding of what those
7 differences are?

8 A. Well, males have penises and females have
9 vaginas and ovaries.

10 Q. Are there any other differences?

11 A. Those are what I would consider biological
12 markers or what my child was judged at at birth. She
13 was born with a penis, so therefore she was judged as
14 male.

15 Q. Are there any other differences between
16 biological males and biological females that you are
17 aware of?

18 A. No.

19 ATTORNEY BLOCK: Objection. Objection,
20 vagueness.

21 BY ATTORNEY TRYON:

22 Q. The next part of that statement says and these
23 --- that these differences are cause for celebration.
24 Do you agree that the differences between biological

1 males and biological females are cause for celebration?

2 ATTORNEY BLOCK: Objection, vagueness.

3 THE WITNESS: Yes.

4 BY ATTORNEY TRYON:

5 Q. The next statement at line five says these
6 inherent differences are not a valid justification for
7 sex-based classifications that make overbroad
8 generalizations or perpetuate the legal, social and
9 economic inferiority of either sex.

10 Do you agree with that sentence?

11 ATTORNEY BLOCK: Objection, legal
12 conclusion.

13 THE WITNESS: There's a lot of legal
14 jargon in that sentence.

15 BY ATTORNEY TRYON:

16 Q. Do you want me to read it again?

17 A. No, I can read it. I just don't necessarily
18 understand the whole sentence.

19 Q. Well, let's break it down. It says these
20 inherent differences are not valid justification for
21 sex-based classification that makes overbroad
22 generalizations.

23 Do you agree with that much?

24 ATTORNEY BLOCK: Objection, legal

1 conclusion.

2 THE WITNESS: Yes.

3 BY ATTORNEY TRYON:

4 Q. The next part says or perpetuates the legal,
5 social and economic inferiority of either sex.

6 Do you agree with that?

7 ATTORNEY BLOCK: Objection, legal
8 conclusion.

9 THE WITNESS: Perpetuate or perpetuate
10 the legal, social? Can you explain that to me?

11 BY ATTORNEY TRYON:

12 Q. My understanding of the term perpetuate is that
13 a --- to promote or conclude or to move forward the
14 legal, social and economic inferiority of either sex.
15 In other words, this statement, as I read it, is saying
16 that these inherent differences are not valid
17 participation for legal, social and economic inferiority
18 of either sex.

19 A. Okay.

20 Q. Do you agree with that?

21 A. Okay. Yeah.

22 ATTORNEY BLOCK: Objection, legal
23 conclusion.

24 BY ATTORNEY TRYON:

1 Q. You can answer, but take your time.

2 A. From what I understand that sentence to mean,
3 yes, but I don't know that I fully understand all the
4 legal jargon in that sentence.

5 Q. Okay. Fair enough.

6 The next sentence at line seven says, rather
7 these inherent differences are a valid justification for
8 sex-based classifications when they realistically
9 reflect the fact that the sexes are not similarly
10 situated in certain circumstances as recognized by the
11 Supreme Court. But forgetting about whether or not the
12 Supreme Court recognized it, do you agree with that
13 statement?

14 ATTORNEY BLOCK: Objection, objection.

15 That doesn't read the complete sentence. It calls for a
16 legal conclusion.

17 THE WITNESS: I don't feel that it's a
18 valid justification for sex-based classifications, no.

19 BY ATTORNEY TRYON:

20 Q. Under any circumstances whatsoever?

21 ATTORNEY BLOCK: Objection, calls for a
22 legal conclusion.

23 THE WITNESS: There are valid
24 justifications for sex-based classifications? I'm

1 unable to imagine all possible situations.

2 BY ATTORNEY TRYON:

3 Q. Can you imagine any situation where a sex-based
4 classification is a valid justification?

5 A. No.

6 ATTORNEY BLOCK: Objection, calls for a
7 legal conclusion.

8 BY ATTORNEY TRYON:

9 Q. So for example, you think that men should always
10 be allowed to use women's bathrooms at any time, no
11 matter what?

12 ATTORNEY BLOCK: Objection.

13 Argumentative.

14 THE WITNESS: Can you repeat the
15 question?

16 BY ATTORNEY TRYON:

17 Q. Do you believe that any man should be allowed to
18 use any female bathroom at any time for any reason?

19 ATTORNEY BLOCK: Same objection.

20 THE WITNESS: I have no problem with
21 people using the restrooms that they want to use.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 Do you believe that it's appropriate to

1 require ---?

2 A. Can you repeat that?

3 Q. Yes. I'm thinking. I'm sorry.

4 A. Okay.

5 I didn't know if it cut out or ---.

6 Q. No. Your last answer surprised me a little bit,
7 so --- and do you believe that in your child's school
8 that any boy should be allowed to enter a girls' locker
9 room or shower at any time for any reason?

10 ATTORNEY BLOCK: Objection. Calls for
11 speculation.

12 THE WITNESS: If there is a bathroom
13 emergency and there's a --- somebody needs to use the
14 restroom, they should be able to use the restroom.

15 BY ATTORNEY TRYON:

16 Q. So if there's a bathroom --- bathroom emergency,
17 as you classified it, then a boy should be allowed to go
18 into a girl's bathroom, if necessary.

19 Is that your testimony?

20 A. No, I wouldn't say that's accurate. I have no
21 problem with people using whichever restroom they want
22 to use.

23 Q. How about locker rooms? You have no problems
24 with a boy in high school going in naked into a girls'

1 shower with naked girls?

2 ATTORNEY BLOCK: Objection, that calls
3 for speculation.

4 THE WITNESS: That is a bit extreme.

5 BY ATTORNEY TRYON:

6 Q. That is my question, though. Do you have --- do
7 you think that's --- there's a justification to prohibit
8 that?

9 A. I would think that that should be prohibited,
10 yes, if they're walking in there naked.

11 Q. Okay.

12 So at least in one situation there's a valid
13 justification for sex-based classifications.

14 Right?

15 ATTORNEY BLOCK: Objection, calls for a
16 legal conclusion.

17 BY ATTORNEY TRYON:

18 Q. I'm not asking you, by the way, on any of these
19 questions for a legal conclusion. I'm asking for your
20 viewpoint as a Plaintiff or representing as the parent
21 of the Plaintiff on whose behalf you filed this lawsuit.
22 I'm asking for your opinion on this law on all these
23 questions.

24 ATTORNEY TRYON: So you don't need to

1 keep saying calls for a legal conclusion. I'm not
2 asking for a legal conclusion.

3 ATTORNEY BLOCK: You're citing case law
4 that's quoted in the bill.

5 BY ATTORNEY TRYON:

6 Q. So I will ask you again ---.

7 ATTORNEY TRYON: Well, could the court
8 reporter please read back my question?

9 COURT REPORTER: Okay. So you at least
10 in one situation there is a valid justification for
11 sex-based classification. Right?

12 THE WITNESS: I also don't think that
13 they should walk around naked in the hallway either.

14 ATTORNEY TRYON: Court Reporter?

15 THE WITNESS: So I don't understand.

16 ATTORNEY TRYON: Court Reporter, could
17 you please read my question one more time, please?

18 COURT REPORTER: Okay. So you're --- at
19 least in one situation there is a valid justification
20 for a sex-based classification. Right?

21 ATTORNEY BLOCK: Objection, asked and
22 answered.

23 BY ATTORNEY TRYON:

24 Q. It's a simple yes or no.

1 ATTORNEY BLOCK: Objection, asked and
2 answered.

3 THE WITNESS: I don't know how to answer
4 this because I'm picturing the kid walking around naked
5 in the school at this point.

6 BY ATTORNEY TRYON:

7 Q. Forget --- don't --- don't picture that. You
8 had said that you believe it's --- as I understand your
9 testimony, is that there is valid justifications for
10 sex-based classification to prohibit a male to --- in
11 from walking into a girls' shower naked when there's
12 other naked girls in there?

13 ATTORNEY BLOCK: Objection. Are you
14 finished with the question? I didn't mean to cut you
15 off.

16 THE WITNESS: Yes, I don't think that a
17 male should walk around naked in a female locker room.

18 BY ATTORNEY TRYON:

19 Q. So a law or rule saying that would be
20 reasonable.

21 Right?

22 A. The school ---?

23 ATTORNEY BLOCK: Objection, calls for a
24 legal conclusion.

3 BY ATTORNEY TRYON:

4 Q. And that would be a validly justified rule.

5 Right?

8 THE WITNESS: Yes.

9 BY ATTORNEY TRYON:

10 Q. Okay.

11 Do you think there might be other valid
12 justifications for sex-based classifications ---

13 A. I don't know.

14 Q. --- to reflect the fact that the sexes are not
15 similarly situated in certain circumstances? Is that a
16 possibility?

17 ATTORNEY BLOCK: Objection. Calls for
18 legal conclusion, misstates prior testimony.

19 THE WITNESS: I don't know. I don't know
20 of all possible situations.

21 BY ATTORNEY TRYON:

22 Q. Neither do I but I'm asking if you think there
23 might be other situations?

ATTORNEY BLOCK: Objection asked and

1 answered.

2 THE WITNESS: I don't know. You probably
3 have to be on a case by case basis. I'm not sure of all
4 possible situations.

5 BY ATTORNEY TRYON:

6 Q. Okay, let's move on, line 12 says in the context
7 of sports involving competitive skill or contact
8 biological males and biological females are not in fact
9 similarly situated. Do you agree with that statement?

10 ATTORNEY BLOCK: Objection, vague, calls
11 for a legal conclusion.

12 THE WITNESS: I don't agree with that.

13 BY ATTORNEY TRYON:

14 Q. Do you believe that in the context biological
15 males and biological females are always similarly
16 situated?

17 ATTORNEY BLOCK: Objection, vague, calls
18 for legal conclusion?

19 THE WITNESS: I believe they are
20 similarly situated.

21 BY ATTORNEY TRYON:

22 Q. Under all circumstances?

23 A. As far as my knowledge goes, yes.

24 Q. Okay.

1 So if we are talking about a biological male
2 who is 18 as compared to a biological female who is 18
3 you believe that they are both similarly situated?

4 ATTORNEY BLOCK: Objection,
5 mischaracterizes testimony. Vague. Calls for legal
6 conclusions.

7 THE WITNESS: In regard to competitive
8 skill?

9 BY ATTORNEY TRYON:

10 Q. Correct.

11 A. Then they are similarly situated.

12 Q. So do you --- is it your position that there was
13 no difference between boys and girls playing high school
14 sports?

15 ATTORNEY BLOCK: Objection.

16 Mischaracterizes the previous testimony.

17 ATTORNEY TRYON: I'm not
18 mischaracterizing her testimony I'm asking her a new
19 question, counsel.

20 THE WITNESS: I believe ---.

21 ATTORNEY BLOCK: Same objection.

22 THE WITNESS: I believe a girl can run as
23 fast as a boy can run.

24 BY ATTORNEY TRYON:

1 Q. So you believe that a --- in a mile run you
2 believe that an 18-year-old girl would be able to run
3 just as fast as a boy?

4 ATTORNEY BLOCK: Objection calls for
5 speculation.

6 THE WITNESS: Yes, I do.

7 BY ATTORNEY TRYON:

8 Q. Do you have any statistics to back that up?

9 A. No, I do not.

10 Q. Have you ever looked at any statistics?

11 A. No, I do not.

12 Q. What is the basis for your belief of what you
13 just expressed?

14 A. With proper training they both have adequate
15 training they can both run.

16 Q. So do you believe that in high school sports the
17 differentiation between --- strike that.

18 Do you believe that in both middle school and
19 high school that there is no difference between males
20 and females in sports?

21 ATTORNEY BLOCK: Objection
22 mischaracterizes testimony. Argumentative?

23 THE WITNESS: I believe the girls are as
24 capable as the boys.

1 | BY ATTORNEY TRYON:

2 Q. So there is no difference between them in either
3 middle school or high school in sports?

4 A. Agreed.

5 Q. Is that your testimony?

6 ATTORNEY BLOCK: Objection vague.

7 THE WITNESS: I think the males and the
8 females can do just as well.

9 BY ATTORNEY TRYON:

10 Q. So do you believe that there should be no
11 difference --- there should be no male teams and female
12 teams but they should all be together in elementary,
13 middle school and high school?

14 ATTORNEY BLOCK: Objection, vague.

15 THE WITNESS: I believe that she should
16 be able to participate on the team that they identify
17 with.

18 BY ATTORNEY TRYON:

19 Q. Well right now, there are different teams.

20 There is a boys team and a girls team in many sports, do
21 you believe that there is any reason at all that there
22 should be a differentiation between boys and girls
23 designation of sports?

A. No, I think ---.

1 ATTORNEY BLOCK: Objection.

2 THE WITNESS: I think if a girl wants to
3 wrestle, the girl should be allowed to wrestle.

4 BY ATTORNEY TRYON:

5 Q. And if a boy wants to run on a girls team ---
6 well let me back up.

7 So do you think there is any reason at all that
8 there should be a boys teams and a girls team in any
9 sports?

10 ATTORNEY BLOCK: Objection, vague.

11 THE WITNESS: I think that they should be
12 able to participate on the team that they identify with.

13 BY ATTORNEY TRYON:

14 Q. Okay.

15 But that is not my question that is a totally
16 different question. The question is are you saying that
17 there should not be a differentiation at all in the
18 middle school or high school sports between men ---
19 between boys and girls?

20 ATTORNEY BLOCK: Objection. Vague.

21 THE WITNESS: I don't know the answer to
22 that.

23 BY ATTORNEY TRYON:

24 Q. Well you said there is no justification for any

1 differentiation between biological males and biological
2 females and I'm trying to understand how that applies to
3 the context of sports?

4 ATTORNEY BLOCK: Objection, misstates
5 prior testimony, argumentative.

6 ATTORNEY TRYON: You're right I did make
7 a mistake there, I apologize.

8 BY ATTORNEY TRYON:

9 Q. In the context ever sports involving competitive
10 sports or contact you told me that biological males and
11 biological females are similarly situated and there is
12 no reason for them to have different designations of
13 sports. Is that consistent with your testimony?

14 A. I believe they are similarly situated.

15 Q. And so there is no reason to have a boys team,
16 right?

17 ATTORNEY BLOCK: Objection, vague,
18 argumentative.

19 THE WITNESS: I don't know what the
20 reason would be to have a boys team.

21 BY ATTORNEY TRYON:

22 Q. So all teams should just be coed, right?

23 ATTORNEY BLOCK: Objection, vague,
24 argumentative?

1 THE WITNESS: I don't know the answer to
2 that.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 So since there is no difference between
6 biological males and females on sports teams than why is
7 it that BPJ can't or won't run on what's designated as
8 the boys cross-country team?

12 THE WITNESS: Because she is a girl.

13 BY ATTORNEY TRYON:

14 Q. Okay.

15 But you just told me there is no difference
16 between boys and girls. So why shouldn't BPJ run on the
17 boys teams if there is no difference between boys and
18 girls?

19 ATTORNEY BLOCK: Objection, misstates
20 prior testimony, argumentative?

21 THE WITNESS: The fact is that there are
22 boys and girls teams and she should be able to run on
23 the girls team because she is a girl.

24 BY ATTORNEY TRYON:

1 Q. So in this lawsuit are you asking that the Court
2 abolish boys teams because there is no difference?

3 ATTORNEY BLOCK: Objection. Calls for a
4 legal conclusion, vague, misstates prior testimony.

5 THE WITNESS: Can you repeat the
6 question?

7 ATTORNEY TRYON: The court reporter
8 please repeat the question?

9 COURT REPORTER: So in this lawsuit are
10 you asking that the court abolish boys' teams because
11 there is no difference?

12 THE WITNESS: No, that is not what.

13 ATTORNEY BLOCK: My objection stands.

14 THE WITNESS: No, that is not what I'm
15 saying.

16 BY ATTORNEY TRYON:

17 Q. So I will ask a new question so I'm not
18 misstating your prior testimony. Do you believe there
19 is a justification to have a boys cross-country team?

20 ATTORNEY BLOCK: Objection, legal
21 conclusion.

22 THE WITNESS: I don't know if there is a
23 justification to that.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 So help me out here because you told me there
3 is no difference between males and females. What would
4 be the justification for having a different boys teams
5 and girls team in track?

6 ATTORNEY BLOCK: Objection, misstates her
7 prior testimony. Vague, argumentative.

8 THE WITNESS: I just know that there are
9 girls teams and boys teams in track.

10 BY ATTORNEY TRYON:

11 Q. But you don't agree there's justification for
12 it.

13 Is that correct?

14 ATTORNEY BLOCK: Objection misstates
15 prior testimony?

16 THE WITNESS: I don't know what the
17 justification is.

18 BY ATTORNEY TRYON:

19 Q. You don't believe there's a justification, do
20 you?

21 ATTORNEY BLOCK: Objection, asked and
22 answered misstates prior testimony?

23 THE WITNESS: I just know that there is
24 male teams and there is female teams in school and in

1 professional sports.

2 BY ATTORNEY TRYON:

3 Q. You mean professional sports, do you believe
4 there is a justification for that?

5 ATTORNEY BLOCK: Objection, vague.

6 THE WITNESS: I think a girl should be
7 allowed to play football.

8 BY ATTORNEY TRYON:

9 Q. How do you think a girl would fare in
10 professional football?

11 A. I don't know.

12 Q. Do you watch professional football?

13 A. I do.

14 Q. And have you ever seen --- are you aware of any
15 females that compete with males in the professional
16 football?

17 A. Not in the NFL.

18 Q. Any other football league?

19 A. I don't watch any other football league.

20 Q. Let's go back to line 12 on the second page of
21 the exhibit. It says in the context of sports involving
22 competitive skill or contact biological place and
23 biological females are not in fact similarly situated.
24 Do you agree with that --- I'm sorry we already asked

1 that my apologies. The next sentence is biological
2 males would displace females to a substantial extent if
3 permitted to be on teams designated for biological
4 females as recognized in the court case. Do you believe
5 that is a correct statement?

6 A. I don't.

7 ATTORNEY BLOCK: Objection, calls for a
8 legal conclusion, vague.

9 THE WITNESS: I don't agree with that
10 statement.

11 BY ATTORNEY TRYON:

12 Q. If the boys track team were to suddenly be
13 consolidated with the girls track team do you think that
14 the biological boys would displace the female, the
15 biological females or not?

16 A. I don't know.

17 ATTORNEY BLOCK: Objection. Vague, calls
18 for speculation.

19 BY ATTORNEY TRYON:

20 Q. You don't know?

21 A. I wouldn't know it would be completely a guess
22 on my point.

23 Q. So it is possible that there is a difference
24 then?

1 ATTORNEY BLOCK: Same objections.

2 THE WITNESS: There is possible there is
3 not a difference is what I'm saying.

4 BY ATTORNEY TRYON:

5 Q. And it's possible that there is a difference?

6 A. Not a difference.

7 Q. I'm sorry?

8 A. I'm saying that they would not displace females.

9 Q. You are absolutely certain they would not, is
10 that what you are saying?

11 ATTORNEY BLOCK: Objection, misstates
12 prior testimony, vague, calls for speculation.

13 THE WITNESS: It's just my opinion.

14 BY ATTORNEY TRYON:

15 Q. Okay.

16 And your opinion --- is your opinion based on
17 any facts?

18 A. No, it is my opinion.

19 Q. Is your opinion based on any facts?

20 ATTORNEY BLOCK: Objection, asked and
21 answered.

22 THE WITNESS: I don't know of a case
23 where a biological male has displaced females.

24 ATTORNEY TRYON: Could you read my

1 question again please, Court Reporter?

2 COURT REPORTER: Is your opinion based on
3 any facts? Do you want the question before that?

4 ATTORNEY TRYON: Yes. I might be
5 helpful. Maybe the answer before that and the question.

6 COURT REPORTER: Okay. And is your
7 opinion based on any facts. And, no, sir, it it my
8 opinion. Question, is your opinion based on any facts?

9 ATTORNEY BLOCK: Same objections, asked
10 and answered.

11 THE WITNESS: It's my opinion.

12 BY ATTORNEY TRYON:

13 Q. So you're not aware of any --- have you read any
14 books, articles, analysis that would support your
15 opinion?

16 A. No.

17 Q. There is a statement on line 17 that says,
18 gender identity is separate and distinct from biological
19 sex to the extent that an individual's biological sex is
20 not determinative or indicative of the individual's
21 gender identity. Do you agree with that statement?

22 A. I don't understand.

23 ATTORNEY BLOCK: Objection, calls for a
24 medical opinion.

3 BY ATTORNEY TRYON:

4 Q. Great. Let's break it down. Gender identity is
5 separate and distinct from biological sex. Do you agree
6 with that?

7 ATTORNEY BLOCK: Objection, vague, calls
8 for medical opinion.

9 BY ATTORNEY TRYON:

10 Q. I'm not asking for your medical opinion, ma'am,
11 I'm just asking if you agree with that statement, gender
12 identity is separate and distinct from biological sex?

13 A. Yes.

ATTORNEY BLOCK: Objection, vague.

15 THE WITNESS: Yes, it's separate.

16 BY ATTORNEY TRYON:

17 Q. And on line 19 in the bill it says,
18 classification is based on gender identity, serve no
19 legitimate relationship to the State of West Virginia's
20 interest in promoting equal athletic opportunities for
21 female sex. Do you agree with that statement?

22 A. I don't ---.

23 ATTORNEY BLOCK: Objection, calls for a
24 legal conclusion, vague.

1 THE WITNESS: I don't understand that
2 sentence.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 Well and I'm not asking for a legal conclusion
6 I'm just asking if you agree with the statement because
7 we're not asking --- because you're not a lawyer and you
8 can't make a legal conclusion so let's break it down.

9 Classifications based on gender identity serve no
10 legitimate relation slip to the State of West Virginia's
11 interest in promoting equal athletic opportunities for
12 the female sex. What about that do you not understand?

13 ATTORNEY BLOCK: Same objections.

16 BY ATTORNEY TRYON:

17 Q. On line 25 it says biological sex means that the
18 individuals physical form as a male or female based
19 solely on the individual's reproductive biology and
20 genetics at birth. Is that a reasonable definition of
21 biological sex in your mind?

22 ATTORNEY BLOCK: Objection, vague, calls
23 for a medical opinion.

THE WITNESS: Biological sex means that

1 they were born with a penis or a vagina, yes.

2 BY ATTORNEY TRYON:

3 Q. Okay.

4 And number two says, biological sex means an
5 individual's physical form as a male or female based
6 solely on the individual's reproductive biology and
7 genetics at birth. I'm not are asking for a medical
8 opinion, I'm asking if that is a reasonable biological
9 definition of sex?

10 ATTORNEY BLOCK: Objection, vague.

11 THE WITNESS: Biological sex means an
12 individual's physical form is male or female based
13 solely on individual's reproductive biology. So it's
14 saying that the biological sex is based on whether they
15 have a penis or a vagina, then yes.

16 BY ATTORNEY TRYON:

17 Q. Okay.

18 And the rest of that sentence says and
19 genetics. Do you understand what genetics are?

20 A. To a certain extent genetics are your DNA.

21 Q. Okay.

22 Do you understand what the different genetic
23 differences between males and --- biological males and
24 biological females?

1 A. Chromosomes.

2 ATTORNEY BLOCK: Objection vague calls
3 for medical opinion.

4 BY ATTORNEY TRYON:

5 Q. And do you know what those chromosomes are? And
6 I know you're not a doctor so if you don't know that is
7 okay?

8 ATTORNEY BLOCK: Same objections.

THE WITNESS: The X and Y chromosomes.

10 BY ATTORNEY TRYON:

11 Q. Do you know which pertains to which?

12 A. No.

13 Q. That's okay.

14 And the next one of course says, female means
15 an individual whose biological sex is --- sex determined
16 at birth is female as used in this section, women or
17 girls are first biological females. Is that a
18 reasonable definition in your mind?

19 ATTORNEY BLOCK: Objection, vague, calls
20 for legal conclusion, calls for medical conclusion?

24 BY ATTORNEY TRYON:

1 Q. Yes.

2 A. If that is what they are referring to in this
3 document?

4 Q. Yes.

5 A. Because my daughter is a female but her
6 biological sex determined at birth was not female.

7 Q. Okay.

8 And how do you define female so it would
9 include BPJ as a female?

10 ATTORNEY BLOCK: Objection, calls for a
11 medical opinion.

12 BY ATTORNEY TRYON:

13 Q. I'm not asking for medical opinion I'm asking
14 what you would use as a definition?

15 A. She identifies as female.

16 Q. Okay.

17 So the definition you would use for female is
18 and I'm just going to write this down because I want to
19 make sure that I understand this, female means anyone
20 who identifies --- who self identifies as female?

21 ATTORNEY BLOCK: Objection.

22 Mischaracterizes her testimony.

23 ATTORNEY TRYON: I didn't ask the
24 question yet.

1 BY ATTORNEY TRYON:

2 Q. Is that how you would define female?

3 ATTORNEY BLOCK: Objection,

4 mischaracterizes her testimony, vague, calls for medical
5 opinion.

6 THE WITNESS: Female means as individual
7 whose biological sex determined at birth as female or
8 someone who identifies as female.

9 BY ATTORNEY TRYON:

10 Q. Okay.

11 So anyone --- under your definition anyone at
12 all that identifies as female would be a female. Is
13 that right?

14 ATTORNEY BLOCK: Objection,

15 mischaracterizes her testimony, calls for medical
16 opinion, vague.

17 BY ATTORNEY TRYON:

18 Q. Okay.

19 Let me explain it all over again because I'm
20 not asking you for a medical opinion, a legal opinion
21 and I'm not mischaracterizing your testimony. I'm
22 asking you if you believe that the term female means
23 anyone who self identifies as female?

24 ATTORNEY BLOCK: Vague.

1 THE WITNESS: If there is an individual
2 that identifies as female then they are a female.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 And for someone to identify as a female do they
6 just need to say I identify as a female?

7 ATTORNEY BLOCK: Objection, vague, calls
8 for medical opinion.

9 THE WITNESS: If a person identifies as
10 female they're female.

11 BY ATTORNEY TRYON:

12 Q. And they simply need to say I identify as a
13 female, no other prerequisites, no other --- nothing
14 they have to do, just say I identify as a female and in
15 your mind that would make them --- under your definition
16 that would be a female person?

17 ATTORNEY BLOCK: Objection,
18 mischaracterizes her testimony, vague.

19 THE WITNESS: What prerequisites?

20 BY ATTORNEY TRYON:

21 Q. Are there any other requirements in your mind
22 under your definition? Your definition as I understand
23 it is female means anyone who identifies as a female?

24 A. Or someone who is born as a female and

1 identifies as female.

2 Q. Or born as a female?

3 A. And identifies as female.

4 Q. And by the same token how would you define male?

5 ATTORNEY BLOCK: Objection, vague, calls
6 for a medical opinion.

7 BY ATTORNEY TRYON:

8 Q. Are you a doctor?

9 A. No.

10 Q. So I'm obviously not asking for medical opinion,
11 I'm just asking you for your opinion as the ---
12 representing the Plaintiff in this case as a parent of
13 the Plaintiff. So how would you define male?

14 ATTORNEY BLOCK: Objection.

15 THE WITNESS: A male who biological sex
16 determined at birth is a male and they identify as a
17 male.

18 BY ATTORNEY TRYON:

19 Q. It has to be both or either one?

20 ATTORNEY BLOCK: Objection, compound
21 vague?

22 THE WITNESS: They can be born a male and
23 identify as a male. They have to identify as a male.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 So if you just identify as a male whatever you
3 are born at under your definition would you be a male?

4 ATTORNEY BLOCK: Objection,
5 mischaracterizes testimony, vague?

6 THE WITNESS: You could be born with
7 female genitalia and identify as a male.

8 BY ATTORNEY TRYON:

9 Q. Okay.

10 So tell me if you agree within this definition,
11 male means anyone who identifies as a male or who is
12 born with male genitalia and identifies as a male?

13 ATTORNEY BLOCK: Objection, vague, calls
14 for a medical opinion.

15 THE WITNESS: In my opinion that would be
16 a male.

17 BY ATTORNEY TRYON:

18 Q. Very good. Great. I just wanted to make sure
19 we had our definitional information.

20 Let me then ask you if someone identifies as a
21 male today and therefore as a male would they --- that
22 person then be able to identify as a female tomorrow and
23 thereby be a female tomorrow?

24 ATTORNEY BLOCK: Objection, vague, calls

1 for a medical opinion, calls for speculation.

2 THE WITNESS: If they truly --- if they
3 identify as a female is that what you are saying?

4 BY ATTORNEY TRYON:

5 Q. If they start out today identifying as a male
6 and tomorrow they change and identify as a female, would
7 they then be a female tomorrow?

8 ATTORNEY BLOCK: Objection, vague, calls
9 for medical opinion, calls for speculation.

10 THE WITNESS: Then they would be
11 transgender and female. Is that what you are saying?

12 BY ATTORNEY TRYON:

13 Q. I'm not saying anything about transgender. I
14 don't --- we haven't discussed that term. I just want
15 to know if someone says today I am male and then
16 tomorrow says I identify as female, under your
17 definition that person would then be female.

18 Correct, tomorrow?

19 ATTORNEY BLOCK: Objection, vague,
20 mischaracterizes testimony, calls for speculation, calls
21 for medical opinion.

22 THE WITNESS: If they identify as female
23 then they are female.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 So today they identify as a male, tomorrow they
3 identify as female, then on the third day could they
4 then turn around and identify as a male and then be a
5 male?

6 ATTORNEY BLOCK: Objection, vague, calls
7 for medical opinion, calls for speculation.

8 ATTORNEY TRYON: Okay.

9 Josh, this is ridiculous. I'm not
10 calling for medical opinion and you keep on saying that.
11 It's ridiculous, it's not an appropriate objection
12 here. And it is very obvious I'm not asking for medical
13 opinion. So I would appreciate that you stop doing that
14 because I think you are interfering with this
15 deposition.

16 ATTORNEY BLOCK: It's a totally valid ---
17 it's a totally valid objection. You're asking medical
18 terms of, it's a completely valid objection.

19 ATTORNEY TRYON: And I will give you a
20 standing ongoing objection as to all of those objections
21 as to my questions.

22 ATTORNEY BLOCK: If you want to preface
23 your question saying you're not calling for a medical
24 opinion, that's fine. But as long as --- I'm entitled

1 to object.

2 ATTORNEY TRYON: I'm never asking you for
3 a medical opinion and if I do I will be very clear that
4 I'm asking for medical opinion.

5 BY ATTORNEY TRYON:

6 Q. Now if I can go back to my question please. So
7 Ms. Jackson, again, I want to ask you if a person
8 identifies as male today, female tomorrow and then male
9 the following day does that person's identity --- is
10 that person shifting from male to female to male and
11 then on the third day as male again?

12 A. They're ---.

13 ATTORNEY BLOCK: Objection, calls for
14 speculation. Vague. Calls for medical opinion.

15 BY ATTORNEY TRYON:

16 Q. Okay.

17 Did you answer my question, ma'am?

18 A. They are --- they identify --- they are the sex
19 they identify with.

20 Q. On any given day; is that your testimony?

21 A. Yes.

22 Q. Thank you. So in the context of sports do you
23 believe that a person should be able to switch back and
24 forth between boys and girls teams on a daily or weekly

1 basis?

2 ATTORNEY BLOCK: Objection,
3 mischaracterizes testimony, vague.

4 THE WITNESS: I believe they should be
5 able to participate on the team that they identify with.

6 BY ATTORNEY TRYON:

7 Q. On any given day; is that right?

8 ATTORNEY BLOCK: Objection,
9 mischaracterizes testimony, vague.

10 THE WITNESS: Yes, if they identify as
11 female then they need to run on the female team. If
12 they identify as male then they need to run on the male
13 team.

14 BY ATTORNEY TRYON:

15 Q. And they can go back and forth on a weekly
16 basis, right?

17 A. Whatever they identify as.

18 Q. On any given --- in any given week, right?

19 ATTORNEY BLOCK: Objection, asked and
20 answered.

21 THE WITNESS: Yep.

22 BY ATTORNEY TRYON:

23 Q. You have already stated your full name, can you
24 give us your current address and phone number. And

1 before you give me your phone number I just want it to
2 be clear that the only time in which we would use your
3 phone number as opposed to going to your counsel to
4 reach you if for some reason your client (sic) could not
5 reach you or you were no longer represented by counsel.
6 So on that basis could you give me your current address
7 and phone number?

8 A. [REDACTED], Lost Creek, West Virginia
9 26385.

10 Q. And your phone number?

11 A. [REDACTED].

12 Q. And is that a landline or is that a cell number?

13 A. That is a landline.

14 Q. Not many people still have landlines. I do.

15 A. Yes, we have to out where we live.

16 Q. I see. And did you get a high school diploma?

17 A. A high school diploma, yes.

18 Q. Where?

19 A. Seneca East High School.

20 Q. Where is that?

21 A. In Ohio.

22 Q. What part of Ohio? What city?

23 A. Attica.

24 Q. Where's Attica?

1 A. Let's see more towards Toledo.

2 Q. Okay.

3 And after high school did you get any further
4 education?

5 A. Yes.

6 Q. Can you please tell me what that was?

7 A. I got an associate of arts degree from the
8 University of Findlay in Findlay, Ohio.

9 Q. And when was that?

10 A. 1996.

11 Q. Anymore education after that?

12 A. I went to the Nuclear Medicine Institute after
13 that, recertified in Nuclear Medicine Technology.

14 Q. Is there a degree or certificate that you get
15 from that?

16 A. It's a certificate.

17 Q. And when was that?

18 A. That would have been in 1996 as well.

19 Q. Any other post-high school education?

20 A. No.

21 Q. When did you graduate from high school?

22 A. 1986.

23 Q. What did you do between 1986 and 1996?

24 A. I worked for a rehabilitation center.

1 Q. Doing what?

2 A. Bookkeeping.

3 Q. Were you there for --- how long were you there?

4 A. I don't remember.

5 Q. What was the next job that you had after that
6 rehabilitation center?

7 A. I went back to school after I got laid off.

8 Q. Is that when you went to University of Findlay?

9 A. Yes, first I went to Community College. It
10 would have been Terra Community College. And then I
11 went to the University of Findlay and received my
12 degree.

13 Q. Great. Where is Terra Community College?

14 A. In Toledo.

15 Q. Okay.

16 Did you get any certificates or anything there?

17 A. No, I just transferred to the University of
18 Findlay.

19 Q. Do you remember when you started at Terra
20 Community College?

21 A. No, I don't.

22 Q. Do you remember when you started at the
23 University of Findlay?

24 A. No, I don't.

1 Q. How long did it take you to get your associate's
2 degree at University of Findlay?

3 A. Two years. And I had to go to the Nuclear
4 Medicine Institute in order to practice nuclear medicine
5 technology.

6 Q. So took you two years to get your associate's
7 degree and you started somewhere around 1994?

8 A. Roughly.

9 Q. Okay.

10 So it looks like you worked as --- what was it
11 called, rehabilitation ---?

12 A. It was the Betty Jane Rehabilitation Center.

13 Q. Okay.

14 So it looks like that you worked there for
15 about eight years, is that fair?

16 A. Sounds right.

17 Q. Okay.

18 Tell me what nuclear medical --- excuse me,
19 nuclear technologist does?

20 A. Injects radioactive material into patients in
21 order to determine a malady.

22 Q. What is an abnormality?

23 A. It can be anything depending on a heart issue,
24 we could be looking for a bone issue, we could be

1 looking for a gallbladder issue, we could be looking for
2 a stomach issue.

3 Q. Okay.

4 So after you got that certification in 1996
5 what did you do then?

6 A. I practiced nuclear medicine technology.

7 Q. Where was the first place you did that?

8 A. That would have been in Florida.

9 Q. Do you remember the name of the place you worked
10 for?

11 A. Let's see, if I heard it I would know it but I
12 don't remember it off the top of my head.

13 Q. Okay. Fair enough.

14 That was starting in 1996 though?

15 A. Yes.

16 Q. And then how long were you there?

17 A. I don't know because I went there to private
18 imaging facility and worked.

19 Q. I'm sorry, can you repeat that I didn't
20 understand?

21 A. I don't know how long I was there. I left there
22 and went to a private imaging facility.

23 Q. What was the name of that?

24 A. RPA.

1 Q. RPA. And what did you do there?

2 A. Nuclear medicine technology.

3 Q. Okay.

4 Do you remember when you started there?

5 A. No, I don't.

6 Q. Do you remember when you left there?

7 A. I left there in 2001.

8 Q. And then what did you do?

9 A. I'm sorry I moved to Georgia.

10 Q. And that was in about 2001?

11 A. Yes.

12 Q. And what did you do in Georgia?

13 A. Nuclear medicine technology at Kennestone
14 Hospital.

15 Q. Can you spell that, please?

16 A. K-E-N-N-E-S-T-O-N-E. It's a well star facility.

17 Q. Excuse me one second. All right. I guess I've
18 been talking too much today I needed a cough drop.

19 Sorry. And how long were you there in Georgia?

20 A. Until 2005.

21 Q. And where did you go from there?

22 A. West Virginia.

23 Q. And what did you do in West Virginia in 2005?

24 A. Positron emission technology.

1 Q. Where was that located?

2 A. First I worked at a mobile unit for Alliance
3 Imaging.

4 Q. Where was that centered?

5 A. They're centered out of Charleston, but I was
6 assigned to North Central West Virginia and the western
7 panhandle and the Eastern panhandle in Maryland.

8 Q. And then you said initially in the mobile unit
9 and then what?

10 A. Then I took a stationary position with the
11 United Hospital Center.

12 Q. And where is that?

13 A. In Bridgeport, West Virginia.

14 Q. And then after that what?

15 A. I'm still there.

16 Q. Okay.

17 And at your house at [REDACTED] who
18 lives there with you?

19 A. My spouse and two of my three children.

20 Q. You're married, right?

21 A. Correct.

22 Q. And when did you get married?

23 A. We got married in --- oh I'm bad at
24 anniversaries, 2000, 2001.

1 Q. If I recall your husband told us that your
2 anniversary is coming up in the next several days?

3 A. It is and I never remember it.

4 Q. Well, I didn't write down the date but it is
5 coming up so you might want to ---.

6 A. I'll have to look at the certificate.

7 ATTORNEY BLOCK: David, we have a 5:30
8 stop and it is 5:24 so I just want to --- I don't want
9 you to start on a line of questioning that you have to
10 stop short in the middle of.

11 ATTORNEY TRYON: Right. And yeah, I'm
12 just going to finish up with this background and then we
13 will suspend this until tomorrow.

14 BY ATTORNEY TRYON:

15 Q. So is this your only marriage?

16 A. Correct.

17 Q. And you have no other children other than the
18 three that you mentioned?

19 A. Correct.

20 ATTORNEY TRYON: Okay.

21 Well now would be a good time to pause
22 until tomorrow and reconvene at 10:00 a.m. if everyone's
23 okay with that.

24 ATTORNEY BLOCK: That is good with

1 Plaintiff's Counsel.

2 THE WITNESS: That's fine.

3 VIDEOGRAPHER: Then if that is it for
4 today we are going off the record at 5:25 p.m.

5 ATTORNEY TRYON: Thank you.

6 * * * * *

7 VIDEOTAPED DEPOSITION CONCLUDED AT 5:25 P.M.

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1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

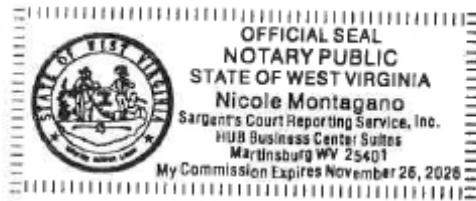
3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.





Nicole Montagano,

Court Reporter